IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 1044 OF 2006

SURESH CHAINRAI BASANTANI .. PETITIONER

Versus

THE COMMISSIONER OF POLICE
GREATER MUMBAI & ORS. .. RESPONDENTS

Mr. Vaibhav Karnik i/b Archana Khan for petitioner

Mr. S. R. Borulkar, PP

Mr. D.S. Gaikwad, PSI present

CORAM:-SMT. RANJANA DESAI &
D. B. BHOSALE,JJ.

DATED:-21/6/2007

P.C.

. The petitioner has inter alia prayed that respondent 1 be directed to register F.I.R. u/s 344, 408, 409, 420, 425, 441, 445, 467, 468, 471, 506-(II) r/w 120-B of the I.P.C. against the builder Mr. Niteen N. Mehta, his C.A. Mr. Deepak Vashi and other buyers Taraknath and Sweta Das and respondent 1 be further directed to constitute a Special Investigation Team to investigate the case under the supervision of the Joint Commissioner of Police (Crime) and file the

report in this Hon’ble Court;

2. We have heard the learned counsel for the petitioner and Shri Borulkar, learned Public Prosecutor.

3. The learned PP on instructions from Mr. D.S. Gaikwad, PSI (Investigating Officer) states that F.I.R. has already been registered against Mr. Niteen Mehta and Mr. Deepak Vashi. He states that investigation is in progress. If complicity of any other person is disclosed necessary steps will be taken in accordance with law.

4. The learned counsel for the petitioner has made a serious grievance that though F.I.R. is registered as far back as on 30th September, 2006, till date the builder Mr. Niteen Mehta, who has sold the flat of the petitioner to one Taraknath Das and Sweta Das has not been arrested. According to him till date the builder has not even been interrogated. He further states that on the anticipatory bail application filed by the builder Mr. Niteen Mehta, the Sessions Court at Mumbai had passed an order directing the investigating authority to give him 72 hours notice in case they

decide to arrest him. The police have taken no steps so far.

5. In view of this submission, we asked the learned Public Prosecutor to handover the papers of investigation to us. We have perused the investigation papers. We find in the papers only a complaint and a panchnama. It appears that the builder has not even been interrogated. The investigating officer is present in the court. The learned Public Prosecutor is not in a position to tell us whether the builder has ever been interrogated. Prima facie, we find this conduct of the investigating agency strange. Though it is not for us to direct arrest of anybody and, we do not want to trench on the investigating agency's power of investigation, we must record that, we are prima facie not happy with the progress of investigation. We, therefore, feel that D.C.P. Zone-12 should look into the matter and peruse the file of investigation. We, therefore, direct the learned Public Prosecutor to send copy of our order to D.C.P. Zone-12. Papers of investigation be placed before D.C.P. Zone-12 for his perusal.

6. We make it clear that, we have not expressed

any final opinion on the merits of the case. But in the interest of justice, we expect the D.C.P. Zone-12 to have a look at all the papers and ascertain whether interrogation is on proper lines. He shall do so independently.

7. Since F.I.R. is registered against the builder and Mr. Deepak Vashi, it is not necessary to consider the petitioner's other prayers at this stage. The petition is disposed of in the aforestated terms.

8. In view of the above, criminal application No. 374 of 2006 is also disposed of.

JUDGE.

JUDGE.